

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

**CINDY CLOUGH, as personal
representative of the Estate of Joyce Lee
Vinson, deceased, and on behalf of the
wrongful death beneficiaries of Joyce
Lee Vinson**

PLAINTIFF

v.

No. 4:13-cv-93-DPM

**CAPITAL SENIORCARE
VENTURES LLC, et al.**

DEFENDANTS

ORDER

The jurisdictional issue raised by the pleadings and motion to remand in this case is identical to one the Court recently decided in the *Slater* case. The Court therefore adopts its reasoning.

Subject-matter jurisdiction where federal law is embedded in state-law claims is reserved for those cases where the federal question is "not only a contested . . . issue, but a substantial one[.]" *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308, 313 (2005). This is a narrow gate. *Central Iowa Power Coop. v. Midwest Independent Transmission System Operator, Inc.*, 561 F.3d 904, 912 (8th Cir. 2009). The complaint here is a basket of state-law issues: negligence, medical malpractice, and civil conspiracy. The alleged state-law tort beneath the civil-conspiracy claim is a bit murky. It does not appear [Clough] is alleging that HUD and Medicare funds were obtained improperly; [Clough] has not alleged fraud. *Document No. 41, at 5*. Instead, she alleges that the Defendants conspired to intentionally underfund the nursing homes, leading to foreseeable injuries. *Ibid.* The substantive measure of Defendants' allegedly

wrongful conduct will turn on what Defendants did with the federal money and why, not how they got it. *Compare Gaming Corp. of America v. Dorsey & Whitney*, 88 F.3d 536, 551 (8th Cir. 1996). That HUD or Medicare provided those funds is incidental. No big federal-law dispute exists about that predicate fact. And Defendants' belated argument about the negligence claim is, as [Clough] notes, more about a defense than a claim. Resolving all doubts in favor of remand to preserve the congressionally approved balance between state and federal judicial responsibilities, *Central Iowa Power Coop.*, 561 F.3d at 912, any federal issues present are not disputed enough or substantial enough to support federal-question jurisdiction.

Slater v. Capital SeniorCare Ventures, LLC., et al., 5:12-cv-447-DPM,

Document No. 46 (E.D. Ark. 4 April 2013).

Motion to remand, Document No. 36, granted. Column's motion to dismiss remains pending for State-court resolution. Clough's request for attorney's fees is denied; the jurisdictional argument was made in good faith.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

5 April 2013